

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

76-4195

Signed copy

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FRANK L. SILVERMAN,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

FRANK L. SILVERMAN and ANNA SILVERMAN,

Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

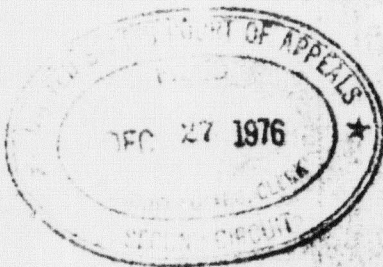
Appellee

ON APPEAL FROM THE DECISIONS OF THE
UNITED STATES TAX COURT

BRIEF FOR THE APPELLEE

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STATEMENT OF THE ISSUES PRESENTED

1. Whether taxpayer was under duress in stipulating his acceptance of the liabilities and penalties embodied in the Tax Court decisions.
2. Whether the Tax Court erred in failing to grant taxpayer's requests for discovery where all of the information which the Government had relevant to the tax liabilities was available to taxpayer for more than two years prior to the date of trial.

3. Whether the Tax Court abused its discretion in refusing to grant taxpayer's requests for further continuances where taxpayer had previously sought and received numerous continuances to prepare for trial.

4. Whether the various other grounds asserted by taxpayer (that the notices of deficiency were invalid, that the civil fraud penalty applies only to that portion of the deficiency attributable to fraud, that the statute of limitations bars the assessment of the taxes, and that the Tax Court erred in failing to grant a mistrial) warrant reversal of the stipulated decisions of the Tax Court.

STATEMENT OF THE CASE

These consolidated cases involve Tax Court decisions entered upon the stipulated income tax liabilities of Frank and Anna Silverman. Notices of deficiencies were mailed to taxpayer^{1/} for the taxable years 1960-1965 on the following dates (R. 8, 60, 131):^{2/}

<u>Date</u>	<u>Year</u>	<u>Amount of Tax</u>	<u>Addition to tax for fraud (Sec. 6653(b))</u>
June 6, 1968	1960	\$ 36,843.21	\$18,421.61
September 15, 1972	1961	27,263.68	13,631.84
	1962	22,107.44	11,053.72
September 15, 1972	1963	9,621.42	4,810.71
	1964	12,437.66	6,218.83
	1965	23,678.20	11,839.10
		<u>\$131,951.61</u>	<u>\$65,975.81</u>

Taxpayer filed timely petitions in the Tax Court for redeterminations of these deficiencies. (Docket Entries, infra, pp. 30, 39, 46.) On July 12, 1976, the Tax Court entered decisions based on the stipulated tax liabilities for these years (R. 298-303):

<u>Year</u>	<u>Income tax</u>	<u>Fraud penalty</u>
1960	\$ 5,874.20	\$ 2,937.10
1961	18,654.07	9,327.04
1962	14,468.00	7,234.00
1963	6,819.82	3,409.91
1964	8,427.47	4,213.74
1965	12,480.22	6,240.11
	<u>\$66,723.78</u>	<u>\$33,361.90</u>

1/ References to taxpayer are to Frank L. Silverman. Anna Silverman is a party to this litigation by virtue of having filed joint returns for the taxable years 1963-1965. (R. 104-105, 114, 121.) Fraud penalties were not asserted against her. (R. 131.)

2/ "R." references are to the separately bound record appendix. The docket entries and portions of Exhibits 20 T, 24 X and 28 AB are set out in Appendix B, infra, for the convenience of the Court. Documents cited are the documents comprising the record on appeal.

On July 26, 1976, taxpayer filed a notice of appeal. (R. 320; Docket Entries, infra, pp. 37, 45, 52.) Jurisdiction is conferred upon this Court by Section 7482 of the Internal Revenue Code of 1954 (26 U.S.C.).

The facts relevant to this appeal may be summarized as follows:

In his petitions taxpayer alleged that he had no income in excess of the amounts which he had reported in his returns (R. 12, 15, 67, 71, 139), that the assessments were barred by the limitations period set forth in Section 6501 of the Internal Revenue Code of 1954 (R. 14, 69, 141), and that the Commissioner had improperly determined his income by the net worth method (R. 12, 67, 138-139). He acknowledged that he had been charged with evasion of taxes for the taxable years 1961-1965, and he raised defenses to his liability, not relevant to this appeal, such as that the assessment of civil liability was barred by the doctrine of double jeopardy. (R. 70, 142.)

In his answers the Commissioner alleged that taxpayer had received unreported income from his activities as an attorney, as a claims referee for the Workmen's Compensation Board of the State of New York, and as an insurance broker. (R. 23, 78, 151.) The Commissioner denied that the assessments were barred by the limitations period, asserting that waivers had been executed for the taxable year 1960 (R. 30-31) and that the limitations period was inapplicable to the taxable years 1961 through 1965, because taxpayer had been convicted for filing fraudulent income tax returns in violation of Section 7201 of the Internal Revenue Code of 1954 for those years. (R. 82-84, 155-159, 160.) United States v. Silverman, 311 F. Supp. 485 (S.D. N.Y., 1970) aff'd, 449

F. 2d 1341 (C.A. 2, 1971), cert. denied, 405 U.S. 918 (1972). The Commissioner further alleged that taxpayer had failed to produce complete and adequate books and records from which his income tax liabilities could be determined. (R. 24), and that the bank deposits method of computing his tax liabilities had been used. (R. 24.)

Subsequently, taxpayer filed a series of motions in these cases seeking detailed information concerning the items which the Commissioner considered in reaching his determination of the deficiencies. See for e.g. Motions of January 11, 1968; March 12, 1973; April 30, 1973; March 22, 1974; December 16, 1974; June 19, 1975. (R. 190-192, 200-205, 219-221, 228-237, 252-254, 269-271.) These motions were denied. (Docket Entries, infra, pp. 30-35.)

In response to the first group of motions (Motions of January 11, 1973, filed in No. 3506-68, Motions of July 31, 1973, filed in Nos. 9003-72 and 9004-72) the Government filed amended answers setting forth in greater detail the basis of the determinations. (Docket Entries, infra, pp. 31, 40, 46; R. 39-40, 93-103, 167-179.) For example, the taxpayer's motion of July 31, 1973, was denied on the ground that the matters set forth in the Government's amended pleadings were sufficient to determine which items had been included as income, and that the matters requested in the motion were more properly matters of evidence on which taxpayer had the burden of proof. (R. 249, 251.) Nevertheless, in order to facilitate the trial of these cases by June 13, 1973, the Government had made available to the taxpayer all of the information which it had concerning the tax liabilities. (R. 342-344.) Accordingly, the Tax Court denied his motions for further

discovery. (R. 345, 348-349, 351-352.) Taxpayer also sought and was granted a series of continuances. (Docket Entries, infra, pp. 32-34, 36, 40-42, 47-48; Orders of December 12, 1973; April 18, 1974; January 24, 1975, February 24, 1976.)

In the meantime, on December 17, 1974, the parties were directed to confer for the purpose of developing a written stipulation of facts. (Docket Entries, infra, pp. 33-34, 41, 48.) Having failed to reach an agreement concerning the facts to be stipulated, the Government filed a motion pursuant to Rule 91(f) of the Tax Court Rules of Practice to accept its statement of facts as established for the purpose of these cases. (Docket Entries, infra, pp. 35, 43, 49; Motion of December 31, 1975.) At the hearing on the motion, the Tax Court rejected the Government's fact statement and directed the parties to attempt to stipulate undisputed matters and to prepare for trial. (R. 364.) Thereafter, efforts to reach agreement failed.

When the case was called for trial on June 21, 1976, the issues in the case had not been narrowed. The Tax Court sought to determine which matters were in dispute. Government counsel submitted schedules reflecting adjustments based upon documents submitted by taxpayer. The court reviewed these schedules according taxpayer an opportunity to object to those items with which he disagreed. With regard to items of income there was no dispute concerning taxpayer's salary, interest income, or

commissions.^{3/} (Tr. of June 22, 1976, p. 228; R. 435-436, 437.)

There were three disputed items included in taxpayer's capital gains: gain from the sale of Atlas stock which taxpayer maintained he never sold (R. 458); gain from the sale of Braniff stock which he contended should be computed on a first in - first out basis rather than by specific shares (Tr. of June 22, 1976, p. 177); and gain from United Airlines warrants which taxpayer argued should be added to the basis of his United Airline stock (R. 501-503).

With regard to items of expense taxpayer presented evidence and gave testimony. In order to avoid a lengthy proceeding on small items of expense, the parties agreed to approximations. (R. 546; see e.g., Tr. of June 22, 1976, pp. 246, 249, 257.)

With regard to the unexplained bank deposits, taxpayer argued that sums which he had held for clients and paid to them, as reflected by judicial settlement statements, had not been offset. Credit for the sums as to which taxpayer presented settlement statements were noted on schedule 20-T and deducted on schedule 24-X, as explained deposits. (Tr. of June 22, 1976, Tr. of June 23, 1976; R. 234-235; 287.) However, taxpayer did not present settlement statements for the year 1960. (R. 707.)

^{3/} Taxpayer objected to the amounts included in his income by reason of fees from the practice of law on the ground that the computations did not take into account fees which he had split with co-counsel. (R. 446.) Adjustments on account of fee splitting were made as a cost of labor (R. 448-449; see also, R. 534-535.)

On the fourth day of the hearing (June 24, 1976), the Tax Court suggested that the parties settle the remaining disputed items. (R. 660-663.) Taxpayer indicated a willingness to settle the remaining amounts and a computation of his 1961 tax liabilities reflecting the concession of the parties was prepared during a recess. (R. 684-685, 686.) Taxpayer declined to sign the stipulation when the hearing resumed, requesting instead that stipulations for all the years be prepared, so that he could determine whether he could afford to pay the total amount. (R. 686.) The Tax Court stated that taxpayer would have to choose whether to stipulate the liabilities or try the case. The Court declined to require that the computations be completed before taxpayer decided whether he wished to settle the cases and set the trial for the next day. (R. 688-690.)

When the proceedings resumed on June 25, 1976, taxpayer stated that he was going to accept the stipulation and request a mistrial. (R. 693.) His oral motion for a mistrial was denied and the court indicated that the trial would begin the following Tuesday. (R. 694-695, 699.) Taxpayer requested a continuance to straighten his papers. (R. 695-696, 698.) The oral motion was denied, but the case was not set for trial until July 7, 1976, eleven days later. (Docket Entries, infra, pp. 37, 44, 51.) At that time, taxpayer submitted summaries of judicial closing statements for 1960 and requested a continuance to obtain copies of the closing statements.^{4/}

^{4/} Taxpayer stated that he had previously had copies of the closing statements, but that he could not find them. He had requested new copies by subpoena, but was informed that it would be a month before the copies could be made available to him. (R. 708, 712.)

(R. 708, 711-714.) The summaries were admitted subject to verification. (R. 715.) After a brief recess to permit taxpayer to find further papers he wished to offer in evidence (R. 734), taxpayer stated that he would accept the suggested amount instead. (R. 735.) That afternoon taxpayer offered the stipulations and the Tax Court entered decisions thereon. (Tr. of July 7, 1976, pp. 454-456; Docket Entries, infra, pp. 37, 44, 51.)

Subsequently, on July 14, 1976, taxpayer filed a motion seeking to vacate the decisions and set aside the stipulations on the grounds that they were entered while he was in a state of collapse, that the liabilities were higher than he had expected, and that he had not given credit for payments to clients reflected by the judicial closing statements. (Motion filed July 14, 1976; Affidavit, pp. 1-3.) The motion was denied. (Docket Entries, infra, pp. 37, 45, 52.)

From the stipulated decisions entered by the Tax Court, taxpayer brings this appeal.

SUMMARY OF ARGUMENT

I

Taxpayer seeks to set aside stipulations of his tax liabilities upon which Tax Court decisions were entered. He argues that the Tax Court somehow forced him to sign the stipulations. The record in this case falls far short of establishing that taxpayer acted under duress. While the Tax Court encouraged taxpayer to settle the liabilities rather than litigate them, the Court made it clear to taxpayer that he could proceed to trial if he desired to do so. In this case, where the taxpayer was an attorney of many years experience, such statements could not be considered to have constituted duress. Indeed, after the comments of which taxpayer complains were made, he initially declined to stipulate the liabilities, but ultimately decided to do so after an eleven day recess and during proceedings free of any of the type of comments by the Court on which he bases his allegation of duress.

Moreover, the Tax Court did not err in denying taxpayer's motion to relieve him of the stipulations into which he had entered. The record fails to indicate that the Commissioner did not, in computing the decisions, give taxpayer credits, as reflected in the stipulations, for amounts paid by him to clients. Additionally, the Tax Court did not abuse its discretion in failing to accept taxpayer's unsupported, and self-serving, contention that his execution of the stipulations had been due to the fact that he was then in a state of shock. Since the filing of the stipulations was effected in the presence of the Court, it was in a position to judge whether the taxpayer was sufficiently in possession of

his faculties to make the act binding and there is no reason for this Court to question that judgment.

II

Taxpayer also argues that the Tax Court erred in failing to grant his motions for discovery and further continuances. Neither of these contentions can be supported on the facts of this case. More than two years prior to trial, the Government had made available to taxpayer all of the information which it had concerning the tax liabilities. The Tax Court denied the motions because taxpayer had been granted access to the totality of the Government's information.

III

Furthermore, taxpayer sought and received numerous continuances to prepare for trial. The Tax Court's refusal to grant a further continuance was well within the sound exercise of its discretion.

IV

Miscellaneous other contentions advanced by taxpayer are equally devoid of merit.

(1) The fact that the notices of deficiencies reflected tax liabilities in excess of that asserted by the Government in earlier criminal tax evasion proceedings is not only totally irrelevant but hardly surprising since the former is concerned only with income the under-reporting of which is due to fraud, while the latter is concerned with the full amount of taxes due, whether or not the omission was due to fraud.

(2) Taxpayer's complaint that the fraud penalty was applied to items in the tax years 1960 and 1965, the circumstances of which,

taxpayer argues, were inconsistent with fraudulent intent, reflects failure to realize that the civil fraud penalty attaches by law to the entire deficiency for any tax year in which any part of the deficiency was due to fraud.

(3) Contrary to taxpayer's apparent view, the statute of limitations is not merely tolled until fraud is discovered; it does not, by the express provision of the statute, apply to any year in which civil fraud is established. Therefore, taxpayer's reliance on the fact that the notices of deficiency were issued more than three years after the Commissioner became aware of the fraud is misplaced.

(4) We do not fully understand the basis of taxpayer's motion for a mistrial, but it seems to have been based on the view that the Tax Court had shown some impatience with taxpayer toward the end of the lengthy proceedings there and should, for that reason, have removed himself from the case in favor of another judge. Obviously, for the reasons indicated by the Court, its growing impatience was well justified and there is not the slightest reason to believe that it had any tendency to deny taxpayer a fair opportunity to make his case--particularly since taxpayer ultimately decided to stipulate to the deficiencies and fraud penalties.

ARGUMENT

I

THE TAX COURT PROPERLY ENTERED DECISIONS
IN CONFORMITY WITH THE STIPULATIONS OF
INCOME TAX LIABILITIES AND PENALTIES
VOLUNTARILY ENTERED BY THE TAXPAYER

The taxpayer in this case elected to enter stipulations of his tax liabilities for the years in issue (1960-1965) rather than go forward with the trial of the case and attempt to present evidence to demonstrate that the deficiencies determined by the Commissioner were incorrect. He now seeks relief from these stipulations on the ground (Br. 18) that the Tax Court coerced him into signing them.

It is axiomatic that a party is bound by the stipulations which he enters. An exception to this rule is recognized where the party acts under duress. Krueger v. Commissioner, 48 T.C. 824, 832 (1967). As the Tax Court has stated (Ibid.):

Any unlawful threats which do in fact overcome the will of the person threatened, and induce him to do an act which he otherwise would not have done, and which he was not bound to do, constitute duress.

See, Stanley v. Commissioner, 45 T.C. 555, 561-562 (1966). The circumstances of the present case fall far short of constituting duress. While it is true that the Tax Court encouraged taxpayer to settle his liabilities rather than litigate them (R. 660-662, 663, 667-669)^{5/}, the Tax Court also made clear to the taxpayer that he could choose to present his evidence at trial instead (R. 671-672, 673, 688). Thus, the comments, while clearly intended to

^{5/} Encouragement to settle is a common practice of the courts in this day of crowded dockets. If such suggestion constituted duress, many or most of the high percentage of judgments based on settlement agreements would be subject to being vacated.

encourage settlement, have no element of coercion and do not warrant relieving taxpayer of the agreements he voluntarily entered. The fact that taxpayer would be called upon to present evidence if he chose to go to trial, hardly constitutes an improper threat. That is particularly true where, as in this case, the taxpayer is an attorney of many years experience.

In any event, it is clear that the Court's comments did not overcome taxpayer's will. Although after the comments were made taxpayer did appear to indicate a willingness to enter settlement stipulations (R. 684), when his 1961 income tax liability was computed and the stipulation was prepared, he declined to sign it (R. 686, 688-689). The Court therefore indicated that it was ready to begin the trial. (R. 695.) The following day taxpayer announced at the beginning of the session that he had discussed the matter with his wife and decided to (1) accept the settlement and (2) ask for a mistrial.^{6/} (R. 693.) Eleven days later when the proceeding resumed, taxpayer introduced some items of evidence and then decided to enter settlement stipulations rather than continue with trial of the case. (R. 735.) During the course of that final day of the proceedings the Tax Court made no further statements of the type of which taxpayer complains. Under these circumstances, the settlement stipulations cannot be regarded as having been entered under duress. Compare, Stanley v. Commissioner, supra, p. 565.

^{6/} Taxpayer requested a continuance to straighten his papers, which the court denied. (R. 696.) However, trial proceedings were not resumed until July 7, 1976. (Docket Entries, infra, pp. 37, 44, 51.)

There is equally no merit to the taxpayer's assignment of error to the Tax Court's denial of taxpayer's motion of July 12, 1976, to vacate the stipulations on the grounds (1) that the Commissioner had failed to credit taxpayer with certain amounts paid by him to clients and (2) that taxpayer had been in a state of shock when he entered into the stipulations. With respect to the taxable years 1961-1965, the amounts held in escrow and distributed to clients, as reflected by judicial closing statements presented to Government counsel, were treated as explained deposits.^{7/}

(R. 707.) The amounts were identified as explained deposits on Exhibit 24 X; a breakdown of the amount distributed to the client, expenses and amounts retained by taxpayer was set out on Exhibit 20 T. Only the amounts retained by taxpayer were treated as professional income from the practice of law and incorporated in Exhibit 28 AB.^{8/} Only these amounts are reflected as income in the stipulated decisions. With respect to the taxable year 1960, taxpayer did not produce the judicial closing statements.^{9/} Initially the amounts for 1960 were not treated as explained

^{7/} Taxpayer maintained a large number of bank accounts in which he deposited both personal funds as well as his clients' funds. (Tr. of Jan. 20, 1976, p. 47.)

^{8/} For example in the Derlinger case, taxpayer recovered \$1000. Of that amount he paid \$550 to his client, and he retained \$425. (Exhibit 20 T, infra, p. 53.) The deposit of the recovery in the Chase Manhattan Bank was treated as an explained deposit. (Exhibit 24 X, infra, p. 54.) The income from the case (\$425) was carried forward as Professional Income on Exhibit 28 AB. (Exhibit 28 AB, infra, p. 55.)

^{9/} Taxpayer testified that he prepared a summary of the judicial closing statements in 1960 but that he had lost the statements, and would be unable to obtain them for approximately one month. (R. 708, 712-713.) Taxpayer requested a continuance to obtain them. (R. 708-709.)

deposits because taxpayer had failed to substantiate the amounts with closing statements. Thus, the total explained deposits for 1960 amounted to \$29,325.44. (Exhibit 28 AB, infra, p.55.) On the final day of the proceedings, however, the Tax Court indicated that the Government should be prepared to treat the amounts as explained, if taxpayer produced the closing statements. (R. 731-732.) Ultimately taxpayer was in fact credited with the appropriate amounts. While the settlement negotiations which took place on the final day of the proceedings between taxpayer and Government counsel do not appear of record, as do adjustments by reason of concessions made in court, it seems obvious that the amount of taxable income for 1960 set out on Exhibit 28 AB, which reflects the adjustments made on account of the concessions of the parties in open court (compare Exhibit 7 G submitted at the beginning of the hearings) would have resulted in a substantially greater tax than reflected in the Tax Court's decisions for that year (R. 298) and that substantial additional downward adjustments must have been made. Moreover, the concessions which were, or were not, made prior to the July 7, 1976, execution of stipulated decisions is irrelevant. What is controlling is that, on that date taxpayer, voluntarily and in open court, signed his agreement to the very decisions ultimately filed by the court and this superseded all prior discussions and agreements and taxpayer was bound thereby. Under these circumstances the Tax Court was warranted in holding taxpayer to his settlement stipulations and in rejecting taxpayer's motion to vacate the decisions on the basis of his unsupported assertions that the

Government had failed to honor its concessions of these amounts. (See, Motion to Vacate, p. 2-3.) As in Spector v. Commissioner, 42 T.C. 110, 114 (1964), this case appears to be one in which the taxpayer had belated second thoughts about a settlement which he had earlier voluntarily entered and attempted to disavow it.

Taxpayer also suggests (Br. 25) as a basis for setting aside the stipulations that he was in a state of shock and did not realize that he had consented to the stipulations on the final day of the proceedings. However, any party seeking to be relieved of his stipulation can make such an assertion and something more than the taxpayer's self-serving statement should be necessary to support such extraordinary relief. Here, the events took place in the presence of the Tax Court which was in a position to judge whether or not the taxpayer appeared to be sufficiently in possession of his faculties to make a reasoned decision. The court was obviously of the view that he was and its judgment and discretion should not be set aside on the basis of nothing more than taxpayer here presents.

II

THE TAX COURT CORRECTLY DENIED
TAXPAYER'S REQUESTS FOR DISCOVERY
BECAUSE ALL OF THE INFORMATION
WHICH THE GOVERNMENT HAD RELEVANT
TO TAX LIABILITIES WAS AVAILABLE
TO TAXPAYER FOR MORE THAN TWO YEARS
PRIOR TO THE DATE OF TRIAL

Taxpayer argues (Br. 9-16) that the Tax Court erred in failing to grant his motions for discovery pursuant to the provisions of Rule 71 of the United States Tax Court Rules of Practice and Procedure (January 1, 1974). In response to taxpayer's first series of motions requesting the details on which the deficiencies were based, the Government filed amended answers to the petitions setting forth in greater detail the basis of determinations. (R. 39-40, 93-103, 167-179.) In addition, by June of 1973, Government counsel had provided taxpayer with all of the information which the Government had concerning the tax liabilities. (R. 343-344.) Subsequently, taxpayer's motions for discovery were denied on the ground that that he already had all of the information which the Government had. (R. 345, 348-349, 351-352.)^{10/} Taxpayer does not deny that this was so. Under these circumstances it cannot be maintained that the Tax Court erred in denying the taxpayer's further requests for discovery.

^{10/} In this connection, it is noteworthy that after the Tax Court had directed the parties to attempt to stipulate the undisputed matters in the case, taxpayer took the position that the schedules reflecting the concessions of the parties constituted new evidence in the case which the Government had not previously given him. (R. 403-405.)

III

THE TAX COURT PROPERLY EXERCISED ITS
DISCRETION IN REFUSING TO GRANT
TAXPAYER'S REQUESTS FOR FURTHER
CONTINUANCES BECAUSE TAXPAYER HAD
PREVIOUSLY SOUGHT AND RECEIVED
NUMEROUS CONTINUANCES TO PREPARE FOR TRIAL

Rule 134 of the United States Tax Court Rules of Practice and Procedure, Appendix, infra, provides for the continuance of matters set for hearing or trial for "good and sufficient cause". The granting or denial of such motions is addressed to the discretion of the Tax Court. Silage v. Commissioner, 192 F. 2d 886, 887 (C.A. 2, 1951); Woodbury v. Commissioner, 231 F. 2d 121, 122 (C.A. 3, 1956); Lessman v. Commissioner, 327 F. 2d 990, 996 (C.A. 8, 1964).

In this case taxpayer was in fact granted numerous continuances. After the case was called for trial on January 20, 1976, it was continued to February 24. (Docket Entries, infra, pp. 36, 43, 50.) Subsequently, in response to taxpayer's request for a continuance, the court stated that the case would be tried on April 1. However, the hearings in this case did not resume until June 22 (Docket Entries, infra, pp. 37, 44, 51), and at that time the proceedings involved only an effort to determine which matters were in dispute and not the presentation of taxpayer's evidence. After hearings which were in progress for a week, and after taxpayer had determined not to settle the cases, the proceedings were again continued for eleven days. (Docket Entries, infra, pp. 37, 44, 51.) Under the circumstances, the Tax Court did not abuse its discretion in refusing, on July 7, 1976, to grant taxpayer a further continuance to marshal further evidence.

Taxpayer argues (Br. 16-17) that the Tax Court abused its discretion in failing to grant a longer continuance than to April 1 when the case was called for trial in February,^{11/} because he had just received voluminous exhibits. In the first place, the proceedings in this case were not resumed until June. Thus, even assuming the receipt of voluminous records with which the taxpayer was not familiar, he had four months in which to examine them. But, in fact, the exhibits constituted primarily his own records, such as the records of his bank deposits. Under these circumstances, the Tax Court did not abuse its discretion in failing to grant taxpayer a further continuance. Indeed, here, the Tax Court would have been warranted in dismissing taxpayer's petitions for failure to prosecute. See, Katz v. Commissioner, 188 F. 2d 957, 959 (C.A. 2, 1951); Rules of Practice and Procedure, United States Tax Court, Rule 149, Appendix, infra.

IV

THE OTHER GROUNDS ASSERTED BY
TAXPAYER FOR REVERSAL OF THE
TAX COURT'S DECISIONS ARE
WITHOUT MERIT

Taxpayer asserts (Br. 15-16) that the notices of deficiency should have been held invalid because the Government had asserted different amounts in the indictments charging tax evasion under Section 7201 of the Internal Revenue Code of 1954 (26 U.S.C.). In the criminal proceedings, the Government had the burden of establishing that taxpayers wilfully attempted to evade or defeat the

^{11/} We do not understand taxpayer's statement (Br. 7) that the continuance was for only one week.

taxes involved. It is not necessary to prove the full amount of under-reported income. Indeed any statement of income not due to fraud is irrelevant. In contrast, in the notices of deficiency issued to establish civil tax liability the purpose is to assess the full and correct amount of taxes due, whether or not the deficiencies are due to fraud. Thus, the notices of deficiency relating to the civil tax liabilities may well (and properly) assert larger amounts of income than specified in indictments charging criminal evasion of taxes for the same years. See, 10 Mertens, Law of Federal Income Taxation (Rev.), §55.18, pp. 124, 126.

In contending (Br. 21-23) that the fraud penalties imposed on certain items in the 1960 and 1965 tax years were improper because the circumstances, taxpayer asserts, were inconsistent with a fraudulent purpose, taxpayer fails to understand that the civil fraud penalty (Section 6653 of the Internal Revenue Code of 1954 (26 U.S.C.)) does not apply to individual items but to the entire deficiency for a given year. Under the provision of the statute, the 50-percent fraud penalty applies to the entire deficiency if any part thereof is due to fraud. Papa v. Commissioner, 464 F. 2d 150 (C.A. 2, 1972); O'Connor v. Commissioner, 412 F. 2d 304, 310 (C.A. 2, 1969), cert. denied, 397 U.S. 921 (1970). Since taxpayer does not contend that there was no fraud proved with respect to any part of the deficiencies found for 1960 or 1965, and since he stipulated to the entry of decisions--including the fraud penalties-- for the years 1960

and 1965 (R. 298, 302), his argument must fail.^{12/}

Taxpayer also argues (Br. 16, 19) that the court below should have held that the statute of limitations barred assessment of the taxes. Although taxpayer apparently recognized that, where fraud is established the statute of limitations does not apply (see, Lowy v. Commissioner, 288 F. 2d 517 (C.A. 2, 1961), cert. denied, 368 U.S. 984 (1962)), his argument rests on (1) the fact that the notices of deficiency were issued more than three years after the Commissioner, according to taxpayer, discovered the fact of the fraud and (2) the contention of law that the Commissioner has only three years after discovery of fraud in which to issue the notices. This contention must fail since taxpayer's view of the law (for which he offers no authority) is incorrect. Section 6501 (c)(1) and (2) of the Internal Revenue Code of 1954, Appendix, infra, provides that, in the case of a false or fraudulent return or a willful attempt to evade taxes, the tax due may be assessed, or a collection proceeding begun, at any time. The limitations period is not merely tolled; it does not apply. Moreover, taxpayer agreed to the entry of the decisions for all of the years in issue and specifically waived the limitations period with respect thereto. (R. 298-303.)

^{12/} In any event, it is established that a taxpayer who has been convicted of fraud in a criminal prosecution may not contest the fact of fraud in a later civil proceeding involving the same tax year. Lefkowitz v. Tomlinson, 334 F. 2d 262, 264-266 (C.A. 5, 1964), cert. denied, 379 U.S. 962 (1965); Plunkett v. Commissioner, 465 F. 2d 299, 305-306 (C.A. 7, 1972). Thus taxpayer is estopped to contest the existence of fraud for the years 1961-1965 for which he was convicted of criminal fraud. (R. 82-84, 155-159, 160.)

Finally, taxpayer urges (Br. 20) that the Tax Court erred in failing to grant his motion for a mistrial. It is not clear precisely what relief taxpayer was seeking in connection with this motion. On June 25, 1976, near the end of the proceedings below, taxpayer announced that he had discussed the matter with his wife and they had determined (R. 693):

* * *to accept the settlement the way it's constituted and * * * make a further motion in this regard for the Court to declare a mistrial in view of what took place yesterday.

Taxpayer was apparently satisfied that he had obtained a satisfactory settlement of his tax liabilities, and there had not yet been a trial of the disputed issues. Hence, there was no basis for a mistrial motion.

Taxpayer's reference, supra, to "what took place yesterday" appears to have been to the Tax Court's growing impatience with him in connection with his efforts to obtain credit for items which he could not substantiate, or which were so small that they had little effect on the liabilities. (R. 660-663.) In response to taxpayer's comment, the Tax Court stated that it felt that both the Court and Government counsel had been more than fair in identifying and eliminating, as explained, amounts which had been included in his income by reason of his bank deposits. (R. 694.) Under the circumstances, the Court's impatience was well justified. There is no basis for taxpayer's apparent assertion that he was deprived of a fair opportunity to make his case.^{13/} The Tax Court

^{13/} In this regard taxpayer relies upon Rule 59 of the Federal Rules of Civil Procedure which provides for the granting of new trials in United States' district courts. It is well settled that Tax Court proceedings are governed by the Rules of Practice of that court. Katz v. Commissioner, 188 F. 2d 957, 959 (C.A. 2, 1951); McKenzie v. Commissioner, 59 T.C. 139, 142 (1972), aff'd. 486 F. 2d 1401 (C.A. 5, 1973). Rules 161 and 162 of the Tax Court Rules of

stood ready to hear taxpayer's evidence and determine the issues in the case or, alternatively, to accept a stipulated decision if the parties could reach agreement, which they ultimately did. There was no error in the denial of the inappropriate motion for mistrial.

13/ cont'd

Practice and Procedure do provide for "new or further trial", but the provisions of the rules are clearly inapplicable here, where there had not yet been a trial of disputed issues, and where the Tax Court accorded taxpayer a full opportunity to have a trial.

CONCLUSION

For the foregoing reasons the decisions of the Tax Court should be affirmed.

Respectfully submitted,

Myron C. Baum
MYRON C. BAUM,
Acting Assistant Attorney General.

GILBERT E. ANDREWS,
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DECEMBER, 1976.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on appellants, appearing pro se, by mailing four copies thereof on this 22d day of December, 1976, in an envelope, with postage prepaid, properly addressed to them as follows:

Frank L. Silverman, Esquire
Anna Silverman
258 Broadway
New York, New York 10007

Gilbert E. Andrews

GILBERT E. ANDREWS,
Attorney.

APPENDIX A

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION

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*

*

(c) Exceptions.--

(1) False Return.-- In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax.-- In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

Rules of Practice and Procedure of the United States Tax Court
(January 1, 1974):

RULE 91. STIPULATIONS FOR TRIAL.

(a) Stipulations Required.

(1) General. The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(2) Stipulations To Be Comprehensive. The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not ground for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of paragraph (1), must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

*

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*

(f) Noncompliance by a Party.

(1) Motion to Compel Stipulation. If, at the date of issuance of trial notice in a case, a party has refused or failed to confer with his adversary with respect to entering into a stipulation in accordance with this Rule, or he has refused or failed to make such a stipulation of any matter within the terms of this Rule, the party proposing to stipulate may, at a time not earlier than 75 days and not later than 50 days prior to the date set for call of the case from a trial calendar, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall (i) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (ii) set forth in express language the specific stipulation which the moving party proposes with respect to each such matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation; (iii) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; (iv) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation; and (v) show proof of service of a copy of the motion on opposing counsel or the other parties.

(2) Procedure. Upon the filing of such a motion, an order to show cause as moved shall be issued forthwith, unless the Court shall direct otherwise. The order to show cause will be served by the Clerk of the Court, with a copy thereof sent to the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed shall file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed admitted for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons and basis on which the responding party relies for that purpose. The Court, where it is found appropriate, may set the order to show cause for a hearing or conference at such time as the Court shall determine.

(3) Failure of Response. If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be entered accordingly.

(4) Matters Considered. Opposing claims of evidence will not be weighed under this Rule unless such evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter ought not be deemed stipulated.

RULE 134. CONTINUANCES.

A case or matter scheduled on a calendar may be continued by the Court upon motion or at its own initiative. Court action, on cases or matters set for hearing or trial or other consideration, will not be delayed by a motion for continuance unless it is timely, sets forth good and sufficient cause, and complies with all applicable Rules. Conflicting engagements of counsel or employment of new counsel will not be regarded as ground for continuance unless the motion for continuance, in addition to otherwise satisfying this Rule, is filed promptly after notice is given of the hearing or trial or other scheduled matter, or unless extenuating circumstances for later filing are shown which the Court deems adequate. A motion for continuance, filed 30 days or less prior to the date to which it is directed, may be set for hearing on that date. As to extensions of time, see Rule 25(c).

RULE 149. FAILURE TO APPEAR OR TO ADDUCE EVIDENCE.

* * *

(b) Failure of Proof. Failure to produce evidence, in support of an issue of fact as to which a party has the burden of proof and which has not been conceded by his adversary, may be ground for dismissal or for determination of the affected issue against that party. Facts may be established by stipulation in accordance with Rule 91, but the mere filing of such stipulation does not relieve the party, upon whom rests the burden of proof, of the necessity of properly producing evidence in support of facts not adequately established by such stipulation. As to submission of a case without trial, see Rule 122.

APPENDIX B
TAX COURT OF THE UNITED STATES
GENERAL DOCKET

DOCKET NO. 3508-68

CLASS

<p>FRANK L. SILVERMAN 58-19 262nd Street Little Neck, New York 11362 ERVE Office Address: 253 Broadway New York, New York 10007 VS.</p>	<p>PETITIONER.</p>	<p>APPEARANCES FOR PETITIONER:</p> <p>NAME</p> <p>ADDRESS</p>
<p>COMMISSIONER OF INTERNAL REVENUE.</p>	<p>RESPONDENT.</p>	

Date Month Day Year	Filings and Proceedings	Action	Served
July 15, 1968	PETITION FILED: FEE PAID July 15, 1968		July 16, 1968
July 15, 1968	REQUEST by petr. for trial at New York, N.Y.	GRANTED July 16, 1968	July 16, 1968
Sept. 12, 1968	MOTION by resp. to extend time from Sept. 12, 1968 to Oct. 31, 1968 within which to move or answer.	(SEE ORDER 9/16/68)	
Sept. 16, 1968	ORDER, that resp's motion filed Sept. 12, 1968 is granted as to extension of time to Oct. 31, 1968 to file Answer. The motion is denied as to extension of time to move.		Sept. 15, 1968
Oct. 30, 1968	MOTION by resp. to extend time from Oct. 31, 1968 to Nov. 30, 1968 within which to Answer.	GRANTED 11/1/68	Nov. 4, 1968
Nov. 29, 1968	ANSWER filed by respondent.		DEC 2 1968
Jan. 3, 1969	REPLY filed by Petitioner.		JAN 6 1969
Jan. 11, 1973	MOTION by Petr. for further and better statement in Answer and to Strike.	See Order Dtd. Feb. 20, 1973	
Jan. 23, 1973	NOTICE of filing of Petr. motion filed Jan. 11, 1973 and Hearing on Feb. 28, 1973. (Amended pleading due Feb. 15, 1973)		Jan. 23, 1973
Feb. 16, 1973	PETITIONERS Memo in Support of Further and better Statement filed.		Feb. 20, 1973

continued on page 2.

TAX COURT OF THE UNITED STATES

GENERAL DOCKET

DOCKET NO. 3505-58

(Continuation)

FRANK L. SILVERMAN			PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served	
Month Day Year				
Feb. 16, 1973	AMENDMENT TO ANSWER filed by Respondent. Leave to file, granted.			Feb. 22, 1973
Feb. 20, 1973	ORDER, that Petr. motion filed Jan. 11, 1973 is denied and this case is stricken from Feb. 28, 1973 at Wash. D.C.			Feb. 22, 1973
Mar. 12, 1973	MOTION by Petr. for further and better statement in Answer and Amendment to Answer and to Strike.			
Mar. 15, 1973	NOTICE of Hearing on April 11, 1973 at Wash. D.C. on Petr. motion filed March 12, 1973.			Mar. 15, 1973
March 28, 1973	PETITIONERS Memorandum of Law submitted on behalf of Petr in support of motion for further and better statement in answer and to strike filed			Mar. 29, 1973
April 11, 1973	HEARING at Washington, D.C. Judge Forrester. Petitioner's motion for further and better statement in answer and amendment to answer and to strike - Denied.			March 30, 1973
April 11, 1973	ORDERED that petitioner's motion filed March 12, 1973 is denied. Judge Forrester.			Apr. 13, 1973
April 13, 1973	TRANSCRIPT of April 11, 1973 rec'd.			
Apr. 30, 1973	MOTION by Petr. for bill of particulars.			
May 2, 1973	NOTICE of hearing on May 30, 1973 at Washington, D.C. on Petr. motion for bill of particulars.			May 2, 1973
May 21, 1973	NOTICE OF OBJECTION filed by Respondent.			May 22, 1973
May 30, 1973	MEMORANDUM of Law Submitted on Behalf of Petr. in Support of Motion for Bill of Particulars filed.			May 30, 1973
	(continued to page 3)			

TAX COURT OF THE UNITED STATES

GENERAL DOCKET

DOCKET NO. 3506-68

(Continued)

FRANK . SILVERMAN		PETITIONER	PAGE 3
Date Month Day Year	Filings and Proceedings	Action	Served
May 30, 1973	HEARING at Washington, D.C. before Judge Brennan. Petitioner's motion for bill of particulars--- con- tinued to June 13, 1973.		
May 30, 1973	ORDER, that hearing on Petitioner's motion filed Apr. 30, 1973 is continued to June 13, 1973 at Washington, D.C.		MAY 31 1973
May 30, 1973	PETR.'s REPLY to the NOTICE of OBJECTION filed.		JUN 5 1973
June 5, 1973	TRANSCRIPT of May 30, 1973 Wash. D.C. rec'd.		
June 13, 1973	HEARING at Wash. D.C. before Judge Tannenwald Petr's motion for Bill of Particulars - Denied.		
June 13, 1973	ORDERED that petr's motion for Bill of Particulars is denied. Judge Tannenwald.		JUN 26 1973
June 15, 1973	TRANSCRIPT of June 13, 1973 rec'd.		
Sep. 7, 1973	NOTICE FOR TRIAL on Dec. 3, 1973 at New York, N. Y.		Sep. 7, 1973
Dec. 3, 10, 12 1973	HEARING at New York, New York before Judge Sterrett. Petr. oral motion for continuance - Granted, see order.		
Dec. 10, 1973	ORDER that petr's. oral motion for continuance is granted and this case is continued generally.		DEC 19 1973
Jan. 3, 1974	TRANSCRIPTS of Dec. 3, 10, & 12, 1973 rec'd. 1 vol. each.		
Jan. 14, 1974	NOTICE OF TRIAL on April 16, 1974 at New York, N.Y.		Jan. 14, 1974
Mar. 22, 1974	MOTION by Petr. for Formal Order Directing Respondent to serve and file Itemized statements of deposits from various banks for years, 1960, 1961, 1962, 1963, 1964, & 1965.		

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(continued to page 4)

TAX COURT OF THE UNITED STATES

GENERAL DOCKET

DOCKET NO. 3506-68

(Continued)

FRANK L. SILVERMAN		PETITIONER	PAGE 11
Date Month Day Year	Filings and Proceedings	Action	Served
Mar. 22, 1974	MOTION by Petr. for hearing on Petr's motion filed 3/22/74 at New York, N.Y.	GRANTED Apr. 1, 1974	APR 2 1974
April 2, 1974	NOTICE of filing of Petr. motion on March 22, 1974 and hearing on April 16, 1974 at New York, New York.		APR 2 1974
Apr. 16, 18, 1974	HEARING at New York, N.Y. before Judge Scott. Petr's oral motion for continuance - Granted. Cases continued generally. Petr's motion made herein on behalf of petr for a formal order, Etc. - Denied. (see order 4/18/74)		
Apr. 18, 1974	ORDER, that petr's motion filed Apr. 16, 1974 is Denied. ORDER, that petr's motion for continuance is (oral) granted and the proceedings are continued generally.		Apr. 30, 1974
April 30, 1974	TRANSCRIPT of April 16, 1974 rec'd.		
May 3, 1974	TRANSCRIPT of April 18, 1974 rec'd.		
Oct. 21, 1974	NOTICE OF TRIAL on Jan. 20, 1975 at New York, N.Y.		Oct. 21, 1974
Dec. 16, 1974	MOTION by Petr. on behalf of Petitioners for an order directing Resp. to furnish an itemized statement of the unexplained taxable deposits to the Petr's. for the years 1960 to 1965 inclusive. (Exhibits attached)	DENIED Jan. 20, 1975	Feb. 5, 1975
Dec. 16, 1974	MOTION by Petr. for hearing on Petr's. Motion filed Dec. 16, 1974 to be held at New York, N.Y.	See Order Dec. 16, 1974	
Dec. 16, 1974	ORDER, that Petr's. Motion filed Dec. 16, 1974, for an order, is set for hearing on Jan. 20, 1975 at New York, N.Y. It is further		

(continued to page 5)

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 3506-68

(Continuation)

FRANK L. SILVERMAN		PETITIONER	PAGE 5
Date Month Day Year	Filings and Proceedings	Action	Served
Order Cont'd. Dec. 16, 1974	ORDERED, that parties confer on or before Jan. 6, 1975 and on such later dates as necessary, for developing a written stipulation of facts, to be filed with the Court on Jan. 20, 1975, setting forth a list of bank deposits which Resp. contends constitute taxable income.		DEC 16 1974
Jan. 20 & Jan. 24, 1975	HEARING at N.Y., N.Y. before Judge Featherston. Petr.'s motion for order directing resp. to furnish itemized statement of unexplained taxable deposits - DENIED		FEB 5 1975
Jan. 24, 1975	Oral motion for continuance by Petr. - (see order) ORDER, that petr.'s oral motion is granted and this case is continued generally.		FEB 5 1975
Feb. 11, 1975	TRANSCRIPT of Jan. 20, 1975 received, and of Jan. 24, 1975 received.		
June 19, 1975	MOTION by Petr. for an order directing the Resp. to serve and file the answers demanded of the said Commissioner pursuant to Notice duly served on said Commissioner by the Petrs. herein. (Exhibit attached)	SEE ORDER Sept. 22, 1975	
June 19, 1975	MOTION by Petr. to designate New York, N.Y. as place of hearing on motion.	See Order July 25, 1975	
July 25, 1975	ORDER, that the motion to designate filed on June 19, 1975 is granted and Petr. Motion for order to compel filed on June 19, 1975 is calendared for hearing on Sept. 22, 1975 at New York, N.Y. This order constitutes official notice.		JUL 26 1975

(Cont'd. to page 6)

GPO 1975-0-136-979

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 3506-68

(Continuation)

FRANK L. SILVERMAN		PETITIONER	PAGE
Date	Filings and Proceedings	Action	Settled
Month Day Year			
Sept. 22, 1975	HEARING at N.Y., N.Y. before Judge Quahy.		
	Petr's. Motion for an Order to Compel Resp. to Answer		
	Interrogatories: (See Order)		
Sept. 22, 1975	ORDERED, that Petr's. Motion for an order filed June		OCT 20 1975
	19, 1975 is denied.		
Oct. 10, 1975	TRANSCRIPT of Sept. 22, 1975 rec'd.		
Nov. 19, 1975	NOTICE OF TRIAL on Feb. 23, 1976 at New York, NY		Nov. 19, 1975
Dec. 31, 1975	MOTION by Resp. to compel stipulation and for order to		
	show cause why proposed facts should not be deemed	DENIED	Feb. 24, 1976
	admitted under Rule 91(f). (Proposed Stipulation of		Mar. 4, 1976
	Facts Attached) (C/S 12/24/75)		
Jan. 6, 1976	ORDERED, that Resp's. Motion is granted, and it is further		JAN 7 1976
	ORDERED, that Petr's. shall, by Jan. 28, 1976, file a		
	response to this Order complying with provisions of		
	Rule 91(f) & shall show cause on Feb. 4, 1976 at Wash., D.C.		
	why Resp's. proposed stipulation of facts should not		
	be accepted as established for purpose of this case.		
Jan. 7, 1976	OBJECTION by Petr. filed to Resp's. 91(f) motion filed		
	on Dec. 31, 1975. (C/S, 1/2/76)		
Jan. 16, 1976	ORDER that these cases are stricken from the calendar		JAN 16 1976
	on Feb. 4, 1976 at Wash., DC. It Is Further		
	ORDER that these cases are calendared for hearing on		
	Jan. 20, 1976 at New York, NY.		
	(CONTINUED TO PAGE 7)		

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 3506-68

(Continuation)

FRANK L. SHERMAN		PETITIONER	PAGE 7
Date Month Day Year	Filings and Proceedings	Action	Served
Jan. 20, 1975	HEARING at N.Y., N.Y. before Judge Quealy. Order to Show Cause - C.A.V. 11-10-10 Affidavit in Opposition to Resp's. Application by Petr. (served by Petr)		
Feb. 4, 1976	TRANSCRIPT of Jan. 20, 1976 rec'd..		
Feb. 23, 24, 1976	PARTIAL TRIAL at New York, NY, before Judge Quealy. Stipulation of facts with exhibits filed 2/24/76. Oral motion for continuance by petr. -- See Order. Resp. motion to compel stipulation and for OSC why proposed facts would not be deemed admitted filed Dec. 31, 1975 -- DENIED 2/24/76.		MAR 4 1976
Feb. 24, 1976	ORDER that petr. oral motion for continuance is GRANTED and these cases are continued for trial on April 1, 1976 at New York, NY.		MAR 4 1976
March 16, 1976	TRANSCRIPT of Feb. 24, 1976 rec'd.		
Mar. 18, 1976	TRANSCRIPT of Feb. 23, 1976 rec'd.		MAR 25 1976
Mar. 26, 1976	ORDER, that the April 1, 1976 Special Trial Session at New York, N.Y. is cancelled; further ORDERED, that parties are to submit a written status report by April 15, 1976.		
Apr. 9, 1976	REPORT ON STATUS filed by Resp.		APR 14 1976
Apr. 9, 1976	STATUS REPORT by Petr. filed.		APR 14 1976
Apr. 12, 1976	ORDERED, that case is calendared for further status report on June 14, 1976 at New York, N.Y. cont. on page 8		APR 14 1976

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 3506-68

(Continuation)

FRANK L. SILVERMAN		PETITIONER	PAGE 8
Date Month Day Year	Filings and Proceedings	Action	Served
May 14, 1976	ORDER that this case is scheduled for trial on June 21 1976 at New York, NY. It Is Further		MAY 14 1976
	ORDER that this case is stricken from the June 14, 1976 session at New York, NY, for purpose of status report.		
	Judge Quealy.		
June 14, 21 thru 25, 1976	PARTIAL TRIAL at New York, N.Y. before Judge Quealy. Partial Trial held -- SEE ORDER.		
June 30, 1976	ORDER, that this case is continued for further trial on July 7, 1976 at New York, N.Y.		July 1, 1976
July 7, 1976	TRIAL at New York, N.Y. before Judge Quealy. Further trial held. Supplemental Stipulation of Facts with Exhibit filed. Stipulated Decision received.		
July 12, 1976	STIPULATED DECISION ENTERED, Judge Quealy.		July 12, 1976
July 14, 1976	MOTION by Petr. to Vacate Stipulated Decision Entered July 12, 1976. (Exhs. Attached)	See Order July 15, 1976	
July 15, 1976	ORDER that petr. motion to vacate stipulated decision filed July 14, 1976 is DENIED.		JUL 16 1976
July 28, 1976	TRANSCRIPTS of June 21 thru 25 and July 7, 1976 rec'd. APPELLATE PROCEEDINGS	(6 Vol.)	
July 26, 1976	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petrs.		July 27, 1976
July 27, 1976	NOTICE of Filing with copy of notice of appeal sent to Chief Counsel, Mr. Meade Whitaker.		July 27, 1976
(Continued to page 9)			

(Continued)

[illegible]

UNITED STATES TAX COURT
GENERAL DOCKET

9003-72

DOCKET NO.

FRANK L. SILVERMAN

58-19 262nd Street
Little Neck, New York

SERVZ; Office address: 258 Broadway, PETITIONER,
New York, New York 10007

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

APPEARANCES FOR PETITIONER: 58-19 262nd St., Little
Neck, New York 10007 11362
Frank L. Silverman, 258 Broadway, N.Y.,
New York 10007 11362

ADDRESS

Date Month Day Year	Filings and Proceedings	Action	Served
Dec. 11, 1972	PETITION FILED: FEE PAID Dec. 11, 1972		Dec. 12, 1972
Dec. 11, 1972	REQUEST by petr. for trial at New York, N.Y.	GRANTED Dec. 12, 1972	Dec. 12, 1972
Feb. 12, 1973	ANSWER by Resp. filed		Feb. 13, 1973
March 19, 1973	REPLY filed by Petr.		Mar. 20, 1973
July 31, 1973	MOTION by Petr. for further and better statement in Answer.	See Order Dtd. Sept. 17, 1973	
August 3, 1973	NOTICE of filing of petr. motion for further and better statement in answer and hearing on Sept. 12, 1973 at Washington, D. C. (Amended Pleading Due on or before August 27, 1973).		AUG 3 1973
Aug. 28, 1973	MOTION by Resp. for leave to file Amendment to Answer out of time. (Amendment to Answer lodged)	GRANTED Sept. 12, 1973	Sept. 19, 1973
Aug. 31, 1973	NOTICE of Hearing on Sept. 12, 1973 at Wash. D. C. on Resp motion filed Aug. 28, 1973.		AUG 31 1973
Sep. 7, 1973	NOTICE FOR TRIAL on Dec. 3, 1973 at New York, N.Y.		Sep. 7, 1973
Sept. 12, 1973	STATEMENT OF FACTS filed by Petr.		SEP 12 1973
Sept. 12, 1973	HEARING at Washington, D. C. before Commr. Caldwell. Resp. motion filed Aug. 28, 1973: Granted. Petr. motion for further and better statement in answer filed July 31, 1973: Denied. (Characterized in		

(Continued to Page 2)

Form No. 34
May 1970

DOCKET NO. 9003-72

(Continuation)

FRANK L. SILVERMAN			PETITIONER	PAGE
Date	Filings and Proceedings	Action	Served	
Month Day Year				
(Minutes Continued)	Order dated Sept. 17, 1973 as "Bills of Particulars")			
	Resp. Amendant to Answer filed.			Sept. 19, 1973
Sept. 14, 1973	TRANSCRIPT of Sept. 12, 1973 received.			
Sept. 17, 1973	ORDER. that petr.'s motion for bill of particulars is denied. (Said motion was filed as "Petr.'s motion for further and better statement in answer").			SEP 19 1973
Dec. 3, 10, 12, 1973	HEARING at New York, New York before Judge Sterrett..			
	Petr. oral motion for continuance-Granted, see order.			
Dec. 10, 1973	ORDER that petr's. oral motion for continuance is granted,			DEC 19 1973
	and this case is continued generally.			
Jan. 3, 1974	TRANSCRIPTS of Dec. 3, 10, & 12, 1973 rec'd. 1 vol. each.			
Jan. 14, 1974	NOTICE OF TRIAL on April 16, 1974 at New York, N.Y.			Jan. 14, 1974
Mar. 22, 1974	MOTION by Petr. for formal Order directing Resp. to serve and file itemized statements of deposits from various banks for years, 1960, 1961, 1962, 1963, 1964, & 1965.			
Mar. 22, 1974	MOTION by Petr. for hearing on Motion filed 3/22/74	GRANTED Apr. 1, 1974		APR 2 1974
	at New York, N.Y.			
April 2, 1974	NOTICE of filing of Petr. motion on March 22, 1974 and hearing on April 16, 1974 at New York, New York.			APR 2 1974
Apr. 16, 18, 1974	HEARING at New York, N.Y. before Judge Scott.			
	Petr's oral motion for continuance - Granted.			
	Cases continued generally.			
	Petr's motion made herein on behalf of petr's for a formal order, Etc. - Denied. (see order 4/18/74)			
Apr. 18, 1974	ORDER, that petr's motion filed Apr. 16, 1974 is Denied. ORDER, that petr's motion for continuance is granted and the proceedings are continued generally.			APR 30 1974

(continued to page 3)

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 9003-72

(Continuation)

FRANK L. SILVERMAN		PETITIONER	PAGE 3
Date Month Day Year	Filings and Proceedings	Action	Served
April 30, 1974	TRANSCRIPT of April 16, 1974 rec'd.		
May 3, 1974	TRANSCRIPT of April 18, 1974 rec'd.		
Oct. 21, 1974	NOTICE OF TRIAL on Jan. 20, 1975 at New York, N.Y.		Oct. 21, 1974
Dec. 16, 1974	MOTION by Petr. on behalf of Petitioners for an order directing Resp. to furnish an itemized statement of the unexplained taxable deposits to the Petr's. for the years, 1960 to 1965 inclusive. (Exhibits attached)	DENIED Jan. 20, 1975	Feb. 5, 1975
Dec. 16, 1974	MOTION by Petr. for hearing on Petr's. Motion filed, Dec. 16, 1974 to be held at New York, N. Y.	See Order Dec. 16, 1974	
Dec. 16, 1974	ORDER, that Petr's. Motion for an order filed Dec. 16, 1974 is set for hearing on Jan. 20, 1975 at New York, N. Y. It is further ORDERED, that parties confer on or before Jan. 6, 1975 and on such later dates as necessary, for developing a written stipulation of facts, to be filed with the Court on Jan. 20, 1975, setting forth a list of bank deposits which Resp. contends constitute taxable income.		DEC 19 1974
Jan. 20 & Jan. 24, 1975	HEARING at N.Y., N.Y. before Judge Featherston. Petr.'s motion for order directing resp. to furnish itemized statement of unexplained taxable deposits - DENIED Oral motion for continuance by Petr. - (SEE ORDER)		FEB 5 1975
Jan. 24, 1975	ORDER, that petr.'s oral motion is granted and this case is continued generally.		FEB 5 1975

(Cont'd. to page 4)

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 9003-72

(Continuation)

FRANK L. SILVERMAN		PETITIONER	PAGE 4
Date	Filings and Proceedings	Action	Served
Month Day Year			
June 19, 1975	MOTION by Petr. for an order directing the Resp. to serve and file the answers demanded of the said Commissioner pursuant to Notice duly served on said Commissioner by the Petrs. herein. (Exhibit attached)	SEE ORDER Sept. 22, 1975	
June 19, 1975	MOTION by Petr. to designate New York, N.Y. as place of hearing on motion.	See Order July 25, 1975	
July 25, 1975	ORDER, that the motion to designate filed on June 19, 1975 is granted and Petr. Motion for order to compel filed on June 19, 1975 is calendared for hearing on Sept. 22, 1975 at New York, N.Y. This order constitutes official notice.		JUL 21 1975
Sept. 22, 1975	HEARING at N.Y., N.Y. before Judge Quealy. Petr's. Motion for an Order to Compel Resp. to Answer Interrogatories: (See Order)		
Sept. 22, 1975	ORDERED, that Petr's. Motion filed June 19, 1975 for an Order is denied.		OCT 20 1975
Oct. 10, 1975	TRANSCRIPT of Sept. 22, 1975 rec'd.		
Nov. 19, 1975	NOTICE OF TRIAL on Feb. 23, 1976 at New York, New York.		Nov. 19, 1975
Dec. 31, 1975	MOTION by Resp. to compel stipulation and for order to show cause why proposed facts should not be deemed admitted under Rule 91(f). (Proposed Stipulation of Facts Attached) (C/S 12/24/75)	DENIED Feb. 24, 1976	Mar. 4, 1976
Jan. 6, 1976	ORDERED, that Resp's. Motion is granted, and it is further		JAN 7 1976
(Contd. to page 5)			

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 9003-72

(Continuation)

FRANK L. SILVERMAN		PETITIONER	PAGE 5
Date	Filings and Proceedings	Action	Served
Month Day Year			
Ord. contd.	ORDERED, that Petr's. shall, by Jan. 28, 1976, file a response to this Order complying with provisions of Rule 91(f) & shall show cause on Feb. 4, 1976 at Wash., D.C., why Resp's. proposed stipulation of facts should not be accepted as established for purpose of this case.		
Jan. 7, 1976	OBJECTION by Petr. filed to Resp's. 91(f) motion filed on Dec. 31, 1975. (C/S, 1/2/76)		JAN 16 1976
Jan. 16, 1976	ORDER that these cases are stricken from the calendar on Feb. 4, 1976 at Wash., DC. It is further ORDER that these cases are calendared for hearing on Jan. 20, 1976 at New York, NY..		
Jan. 20, 1976	HEARING at N.Y., N.Y. before Judge Quealy. Order to Show Cause - C.A.V. <i>in re</i> <i>stipulation</i> Affida it in Opposition to Resp. Application by Petr. (served by airtel)		
Feb. 4, 1976	TRANSCRIPT of Jan. 20, 1976 rec'd.		
Feb. 23, 24, 1976	PARTIAL TRIAL at New York, NY, before Judge Quealy. Stipulation of facts with exhibits filed 2/24/76. Oral motion for continuance by petr. -- See Order. Resp. motion to compel stipulation and for OSC why proposes facts would not be deemed admitted filed Dec. 31, 1975 -- DENIED 2/24/76.		MAR 4 1976
Feb. 24, 1976	ORDER that petr. oral motion for continuance is GRANTED and these cases are continued for trial on April 1, 1976 at New York, NY.		MAR 1 1976

cont. on page 6

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 9003-72

(Continuation)

FRANK I. SILVERMAN		PETITIONER	PAGE
Date	Filings and Proceedings	Action	Served
Month Day Year			
March 16, 1976	TRANSCRIPT of Feb. 24, 1976 rec'd.		
Mar. 18, 1976	TRANSCRIPT of Feb. 23, 1976 rec'd.		
Mar. 26, 1976	ORDER, that the April 1, 1976 Special Trial Session at New York, N.Y. is cancelled; further ORDERED, that parties are to submit a written status report by April 15, 1976.		MAR 26 1976
Apr. 9, 1976	REPORT ON STATUS filed by Resp.		APR 11 1976
Apr. 9, 1976	STATUS REPORT by Petr. filed.		APR 14 1976
Apr. 12, 1976	ORDERED, that case is calendared for further status report on June 14, 1976 at New York, N.Y.		APR 14 1976
May 14, 1976	ORDER that this case is scheduled for trial on June 21, 1976 at New York, NY. It Is Further ORDER that this case is stricken from the June 14, 1976 session at New York, NY, for purpose of status report. Judge Quealy.		MAY 14 1976
June 14, 21 thru 15, 1976	PARTIAL TRIAL at New York, N.Y. before Judge Quealy. Partial Trial Held -- SEE ORDER.		
June 30, 1976	ORDER, that case is continued for further trial at a Special Trial Session on July 7, 1976 at New York, N.Y.		JUL 1 1976
July 7, 1976	TRIAL at New York, N.Y. before Judge Quealy. Supplemental Stipulation of Facts with exhibit filed. Stipulated Decision received.		
July 12, 1976	STIPULATED DECISION ENTERED, Judge Quealy.		July 12, 1976

(Continued on page 7)

DO NOT WRITE

UNITED STATES TAX COURT
GENERAL DOCKET

SOCKET NO. 9003-72

(Continuation)

Date		Filings and Proceedings	Action	Filed
Month	Day	Year		
July 14,	1976	MOTION by Petr. to Vacate Stipulated Decision Entered July 12, 1976. (Exhs. Attached)	See Order July 15, 1976	
July 15,	1976	ORDER that petr. motion to vacate stipulated decision filed July 14, 1976 is DENIED.		JUL 13 1976
July 28,	1976	TRANSCRIPTS of June 21 thru 25 and July 7, 1976 rec'd. APPELLATE PROCEEDINGS	(6 Vol.)	
July 26,	1976	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petrs.		July 27, 1976
July 27,	1976	NOTICE of Filing with copy of notice of appeal sent to Chief Counsel, Mr. Wade Whitaker.		July 27, 1976
July 27,	1976	NOTICE, to parties, of assembling and date for transmission of record.		July 27, 1976
Aug. 23,	1976	ORDER that the Clerk of the Court is directed to place the copies of the minute sheets, the order dated 6/30/76, and the decision in each case in the Court's official file and each document shall be deemed to be the original document.		Aug. 24, 1976

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 9004-72

FRANK L. SILVERMAN AND ANNA SILVERMAN

58-19 262nd St.

Little Neck, New York

SERVE: Office address: 258 Broadway PETITIONER.

VS. New York, New York
10007

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

APPEARANCES FOR PETITIONERS-19 262nd St., Little
Frank L. Silverman, 258 Broadway, Little
Neck, N. Y. 10007--(Silverman & Silverman)

NAME

ADDRESS

Date		Filings and Proceedings	Action	Served
Month	Day Year			
Dec. 11, 1972		PETITION FILED: FEE PAID Dec. 11, 1972		Dec. 13, 1972
Dec. 11, 1972		REQUEST by petr. for trial at New York, N.Y.	GRANTED Dec. 12, 1972	Dec. 13, 1972
Feb. 12, 1973		ANSWER by Resp. filed		Feb. 13, 1973
March 19, 1973		REPLY filed by Petr.		Mar. 20, 1973
July 31, 1973		MOTION by Petr. for Further and Better Statement in Answer.	See Order Dtd. Sept. 17, 1973	
August 3, 1973		NOTICE of filing of petr. motion for further and better statement in answer and hearing on Sept. 12, 1973 at Washington, D. C. (Amended Pleading Due on or before August 27, 1973).		AUG 3 1973
Aug. 28, 1973		MOTION by Resp. for leave to file Amendment to Answer out of time. (Amendment to Answer Lodged)	GRANTED Sept. 12, 1973	Sept. 19, 1973
Aug. 31, 1973		NOTICE of Hearing on Sept. 12, 1973 at Wash.D.C. on Resp motion filed Aug. 28, 1973.		AUG 31 1973
Sep. 7, 1973		NOTICE FOR TRIAL on Dec. 3, 1973 at New York, N.Y.		Sep. 7, 1973
Sept. 12, 1973		STATEMENT OF FACTS filed by Petr.		SEP 12 1973
Sept. 12, 1973		HEARING at Washington, D. C. before Commr. Caldwell. Resp. motion filed Aug. 28, 1973: Granted. Petr. motion for further and better statement in answer filed July 31, 1973: Denied. (Characterized		

(Continued to Page 2)

Form No. 34
May 1970

DOCKET NO. 9004-72

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(Continuation)

FRANK L. SILVERMAN AND ANNA SILVERMAN			PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served	
Month Day Year				
Minutes Continued)	in Order dated Sept. 17, 1973 as "Bills of Particulars").			
	Resp. Amendment to Answer filed.			Sept. 19, 1973
Sept. 14, 1973	TRANSCRIPT of Sept. 12, 1973 received.			
Sept. 17, 1973	ORDER, that petr.'s motion for bill of particulars is denied. (Said motion was filed as "Petr.'s motion for further and better statement in answer").			SEP 19 1973
Dec. 5, 10, 12, 1973	HEARING at New York, New York before Judge Sterrett.			
	Petr. oral motion for continuance - Granted, see order.			
Dec. 10, 1973	ORDER that petr's. oral motion for continuance is granted.			Dec. 19, 1973
	and this case is continued generally.			
Jan. 3, 1974	TRANSCRIPTS of Dec. 3, 10, & 12, 1973 rec'd. 1 vol. each.			
Jan. 14, 1974	NOTICE OF TRIAL on April 16, 1974 at New York, N.Y.			Jan. 14, 1974
Mar. 22, 1974	MOTION by Petr. for formal order directing resp. to serve and file itemized statements of deposits from various banks for years, 1960, 1961, 1962, 1963, 1964, & 1965.			
Mar. 22, 1974	MOTION by Petr. for hearing on Motion filed 3/22/74 at New York, N.Y.	GRANTED Apr. 1, 1974		APR 2 1974
April 2, 1974	NOTICE of filing of Petr. motion on March 22, 1974 and hearing on April 16, 1974 at New York, New York.			APR 2 1974
Apr. 18, 1974	ORDER, that petr's motion filed Apr. 16, 1974 is Denied. and further oral ORDER, that petr's motion for continuance is granted and the proceedings are continued generally.			APR 30 1974
Apr. 16, 18, 1974	HEARING at New York, N.Y. before Judge Scott. Petr's oral motion for continuance - Granted. Cases continued generally. Petr's motion made herein on behalf of Petr's for a formal order, Etc. - DENIED. (see order 4/18/74)			

(continued to page 3)

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UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 9004-72

(Continuation)

FRANK L. SILVERMAN & ANNA SILVERMAN		PETITIONER	PAGE 3
Due Month Day Year	Filings and Proceedings	Action	Served
April 30, 1974	TRANSCRIPT of April 16, 1974 rec'd.		
May 3, 1974	TRANSCRIPT of April 18, 1974 rec'd.		
Oct. 21, 1974	NOTICE OF TRIAL on Jan. 20, 1975 at New York, N.Y.		Oct. 21, 1974
Dec. 16, 1974	MOTION by Petr. on behalf of Petr. for an order directing Resp. to furnish an itemized statement of the unexplained taxable deposits to the Petr's. for the years 1960 to 1965 inclusive. (Exhibits attached)	DENIED Jan. 20, 1975	Feb. 5, 1975
Dec. 16, 1974	MOTION by Petr. for hearing on Petr's. Motion filed., Dec. 16, 1974 to be held at New York, N.Y.	See Order Dec. 16, 1974	
Dec. 16, 1974	ORDER, that Petr's. Motion for an order filed Dec. 16, 1974, is set for hearing on Jan. 20, 1975 at New York, N. Y.. It is further ORDERED, that parties confer on or before Jan. 6, 1975, and on such later dates as necessary, for developing a written stipulation of facts, to be filed with the Court on Jan. 20, 1975, setting forth a list of bank deposits which Resp. contends constitute taxable income.		DEC 19 1974
Jan. 20 & Jan. 24, 1975	HEARING at N.Y., N.Y. before Judge Featherston. Petr.'s motion for order directing resp. to furnish itemized statement of unexplained taxable deposits - DENIED Oral motion for continuance by Petr. - (see order)		FEB 5 1975
Jan. 24, 1975	ORDER, that petr.'s oral motion is granted and this case is continued generally.		FEB 5 1975

(Cont'd. to page 4)

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UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 9604-72

(Continuation)

FRANK L. STEVENSON, ETC.		PETITIONER	PAGE 4
Date Month Day Year	Filings and Proceedings	Action	Served
June 19, 1975	MOTION by Petr. for an order directing the Resp. to serve and file the answers demanded of the said Commissioner pursuant to Notice duly served on said Commissioner by the Petrs. herein. (Exhibit attached)	See Order Sept. 22, 1975	
June 19, 1975	MOTION by Petr. to designate New York, N.Y. as place of hearing on motion.	SEE Order July 25, 1975	
July 25, 1975	ORDER, that the motion to designate filed on June 19, 1975 is granted and Petr. motion for order to compel filed June 19, 1975 is calendared for hearing on Sept. 22, 1975 at New York, N.Y. This order constitutes official notice.		JUL 28 1975
Sept. 22, 1975	HEARING at N.Y., N.Y. before Judge Quealy. Petr's. Motion for an Order to Compel Resp. to Answer Interrogatories: (See Order)		
Sept. 22, 1975	ORDERED, that Petr's. Motion for an order filed June 19, 1975 is denied.		OCT 20 1975
Oct. 10, 1975	TRANSCRIPT of Sept. 22, 1975 rec'd.		
Nov. 19, 1975	NOTICE OF TRIAL on Feb. 23, 1976 at New York, New York		Nov. 19, 1975
Dec. 31, 1975	MOTION by Resp. to compel stipulation and for order to show cause why proposed facts should not be deemed admitted under Rule 91(f). (Proposed Stipulation of Facts Attached) (C/S 12/24/75)	DENIED Feb. 24, 1976	Mar. 4, 1976
Jan. 6, 1976	ORDERED, that Resp's. Motion is granted, and it is further ORDERED, that Petr's. shall, by Jan. 28, 1976, file a response to this Order complying with provisions of		JAN 7 1976

(Contd. to page 5)

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 2004-72

(Continuation)

FRANK L. & ARMA SILVERMAN		PETITIONER	PAGE 5
Date Month Day Year	Filings and Proceedings	Action	Served
Ord. contd.	Rule 91(f) & shall show cause on Feb. 4, 1976 at Wash., D.C. why Resp's. proposed stipulation of facts should not be accepted as established for purpose of this case.		
Jan. 7, 1976	OBJECTION by Petr. filed to Resp's. 91(f) motion filed on Dec. 31, 1975. (C/S, 1/2/76)		
Jan. 16, 1976	ORDER that these cases are stricken from the calendar on Feb. 4, 1976 at Wash., DC. It Is Further ORDER that the cases are calendared for hearing on Jan. 20, 1976 at New York, NY.		JAN 16 1976
Jan. 20, 1976	HEARING at N.Y., N.Y. before Judge Quealy. Order to Show Cause - G.A.W. <i>See order 2/24/76</i> Affidavit in Opposition to Resp. Application by Petr. (served by party)		
Feb. 4, 1976	TRANSCRIPT of Jan. 20, 1976 rec'd..		
Feb. 23, 24, 1976	PARTIAL TRIAL at New York, NY, before Judge Quealy. Stipulation of facts with exhibits filed 2/24/76. Oral motion for continuance by petr. -- See Order. Resp. motion to compel stipulation and for OSC why proposed facts should not be deemed admitted filed Dec. 31, 1975 -- DENIED 2/24/76.		MAR 4 1976
Feb. 24, 1976	ORDER that petr. oral motion for continuance is GRANTED and these cases are continued for trial on April 1, 1976 at New York, NY.		MAR 4 1976
March 16, 1976	TRANSCRIPT of Feb. 24, 1976 rec'd.		
Mar. 18, 1976	TRANSCRIPT of Feb. 23, 1976 rec'd.		

(Continued on page 6)

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 9004-72

(Continuation)

FRANK L. AND ANNA SILVERMAN,		PETITIONER	PAGE 6
Date Month Day Year	Filings and Proceedings	Action	Served
Mar. 26, 1976	ORDER, that the April 1, 1976 Special Trial Session at New York, N.Y. is cancelled; further ORDERED, that parties are to submit a written status report by April 15, 1976.		MAR 23 1976
Apr. 9, 1976	REPORT ON STATUS filed by Resp.		APR 14 1976
Apr. 9, 1976	STATUS REPORT by Petr. filed.		APR 14 1976
Apr. 12, 1976	ORDERED, that case is calendared for further status report on June 14, 1976 at New York, N.Y.		APR 14 1976
May 14, 1976	ORDER that this case is scheduled for trial on June 21, 1976 at New York, NY. It Is Further ORDER that this case is stricken from the June 14, 1976 session at New York, NY, for purpose of status report. Judge Quealy.		MAY 14 1976
June 14, 21. thru 25, 1976	PARTIAL TRIAL at New York, N.Y. before Judge Quealy. Partial Trial Held -- See Order.		
June 30, 1976	ORDER, that case is continued for further trial to a Special Trial Session on July 7, 1976 at New York, N.Y.		July 1, 1976
July 7, 1976	TRIAL at New York, N.Y. before Judge Quealy. Supplemental Stipulation of Facts with Exhibit filed. Stipulated Decision received.		
July 12, 1976	STIPULATED DECISION ENTERED, Judge Quealy.		July 12, 1976
July 14, 1976	MOTION by Petr. to Vacate Stipulated Decision Entered July 12, 1976. (Exhs. Attached)	See Order July 15, 1976	
	cont. on page 7		

(Continued)

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Frank L. Silverman

Summary of Closing Statements Filed with Judicial Conference

Editor	Name of Client	Date Filed	Class	Amount to Client	Confidentiality	Amount on Balance	Amount of Expense	Location
39	DEBENGER	11/16/61	1000	500	✓	350	✓	NY
40	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
41	ENG	11/16/61	1000	500	✓	350	✓	NY
42	NYL	11/16/61	1000	500	✓	350	✓	NY
43	TOTAL FOR 1961							
44	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
45	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
46	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
47	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
48	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
49	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
50	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
51	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
52	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
53	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
54	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
55	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
56	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
57	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
58	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
59	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
60	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
61	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
62	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
63	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
64	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
65	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
66	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
67	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
68	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
69	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
70	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
71	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
72	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
73	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
74	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
75	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
76	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
77	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
78	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
79	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
80	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
81	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
82	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
83	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
84	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
85	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
86	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
87	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
88	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
89	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
90	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
91	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
92	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
93	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
94	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
95	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
96	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
97	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
98	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
99	REIDLAND	11/16/61	1000	500	✓	350	✓	NY
100	REIDLAND	11/16/61	1000	500	✓	350	✓	NY

	1960		1961		
	Pre Return	Costs etc.	Pre Return	Costs etc.	Pre Return
Dividend Income	1120 -	10319	2000 -	6,25273	330 -
Interest Income (f)	<50 -	<50 -	<50 -	<50 -	<50 -
Interest Income (fow)	—	15444	—	11170	—
Commission Income	—	1357	—	2573	—
Wages	321185	24125	972544	972544	1081111
Insurance Income	1165 -	7165	113796	1132616	21133
Capital Gains	<71138 -	<103412 -	<255137 -	<713419 -	<112171 -
Unrealized Gains	—	232544	—	1231723	<37577 -
Unrealized Losses	—	1060 -	—	2045120	—
Aggreg. Gross Income	90057	560716	765377	5171079	512775
Less:					
Debit for a Term	10900	500 -	102910	500 -	120048
Exemptions	1200 -	1200 -	1200 -	600 -	1200 -
Taxable Income	63151	513716	537437	518079	591727
Less:					
Debit for a Term	—	10732	102010	70000	—
Exemptions	—	532718	102147	5298102	—
Adjusted Value	—	0	—	—	—
Capital Gains	—	112500	—	—	—
Losses	—	521777	—	—	—

[Exhibit 28 AB]